

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX

MIKE STRONG, INC.

Employer

and

Case 6-RC-11991

CONSTRUCTION & GENERAL LABORERS  
LOCAL 379, AFL-CIO

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Kim R. Siegert, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.<sup>1</sup>

Upon the entire record<sup>2</sup> in this case, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St., NW., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 1, 2001.

<sup>2</sup> Both the Employer and the Petitioner timely filed briefs in this matter which have been duly considered by the undersigned.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent a single unit of all full-time and regular part-time concrete crew employees (laborers and finishers) employed by the Employer at its Hazelton, West Virginia, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees. The Employer, contrary to the Petitioner, contends that the petitioned-for unit is too limited in scope and that the only appropriate unit is an overall unit which comprises all of its nonclerical employees employed at its Hazelton, West Virginia, facility. In addition, the Petitioner, contrary to the Employer, would exclude Mike McNair and Chris Klimowicz as supervisors within the meaning of the Act. There are approximately six employees in the petitioned-for unit and approximately 38 employees in the overall unit which the Employer contends is the only appropriate unit. There is no history of collective bargaining for any of the employees involved herein. The Petitioner does not wish to proceed to an election in any unit broader in scope than the petitioned-for unit.

The Employer, a California corporation with its headquarters located in California City, California, is engaged in the fabrication of pre-stressed concrete products, including the manufacture of jail cells for prisons. Solely involved herein is the Employer's Hazelton, West Virginia, facility (herein Hazelton or the facility).

The record reveals that the federal government has contracted with a general contractor, Rotondo Weirich (RW), for the construction of a federal prison in Hazelton which is scheduled for completion in 2003. RW has contracted with the Employer to construct in excess of 800 prison cells for the federal prison. The record reveals that the Employer has had a long history of contracts with RW for this type of work. The Employer, in the performance of its contract with RW, has established a manufacturing site in Hazelton, on land subleased from RW, for the

construction or manufacture of these cells.<sup>3</sup> Once the cells are completed, they are loaded by crane on large flatbed trucks and transported by RW to the federal prison jobsite located approximately one-quarter to one-half mile from the Employer's facility. The Employer commenced operations at the facility in late April 2001. The Employer manufactures approximately 3 to 4 cells per day. Because of the nature of the work engaged in by the Employer, the record demonstrates that the workforce at Hazelton varies. Thus, since the inception of operations at Hazelton, the number of concrete crew employees, which the Employer designates as pour and finish employees, has varied between 3 to 8 employees. At the time of hearing, the concrete crew consisted of six employees in addition to McNair and Klimowicz whose supervisory status is in dispute.<sup>4</sup> The records also reveals that the Employer employs a "core" group of employees that it transfers from job to job. At Hazelton, approximately 24 employees are core employees, including McNair, Klimowicz and one or two other concrete crew employees.<sup>5</sup>

In charge of the Employer's Hazelton facility is Russell Koop, project manager. Koop reports to the Employer's vice president, Tom Davis, who works at the Employer's California headquarters. Davis visits the Hazelton facility several times a month. Reporting to Koop are project superintendent Kurt Stoffel and production superintendent Rick Borges. Klimowicz, a crane operator and night supervisor, reports to the above-named individuals.

At the facility, the Employer has construction concrete pads and runways for the purpose of forming a support base for the fabrication of jail cells. The Employer has six designated crews to perform the tasks necessary to manufacture the cells. These crews are: production,

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<sup>3</sup> It appears that a temporary manufacturing site is established by the Employer on all of its jobs, including the manufacture of prison cells.

<sup>4</sup> In addition, two concrete crew employees were on strike at the time of the hearing: Steve Montoney, a full-time employee of the Laborers District Council of West Virginia, and Eric Bennett. The "strike" started on about May 29, 2001.

<sup>5</sup> "Core" employees, unlike local hires, are "guaranteed" 40 hours of work per week.

rebar, maintenance, pour and finish (concrete), patch and repair and prep. The rebar crew, which consists of approximately ten employees, ties precut and prebent reinforcing rods around a form to produce a concrete reinforcing cage that forms the outline of the jail cell. The production crew, which consists of approximately ten employees, is responsible for setting up and preparing a form for the poured concrete cell. The set up includes opening the concrete form, installing the steel cage previously prepared by the rebar crew, installing reinforcing beams, electrical conduit and other duct work necessary for plumbing and ventilation and bolting the form together. The pour and finish crew, which, as noted, consists of approximately six to eight employees, is responsible for pouring concrete into the form, vibrating the concrete to release trapped air and fill any voids, running concrete finishing machinery and finishing certain aspects of the concrete cell by hand, with trowels and brushes. The patch and repair crew, which consists of approximately five employees, is responsible for making minor repairs, filling holes and burnishing rough edges on the finished concrete cells after the molds are removed, the day after the concrete is poured. The preparation crew, which consists of one employee, is responsible for keeping the forms clean and ready to receive the concrete on the next pour. The maintenance crew, which consists of two employees, performs a variety of tasks in support of the Employer's operations.

The record reflects that all construction or manufacturing employees, except the concrete crew, work between 6:00 a.m. and 2:00 p.m. or between 7:00 a.m. and 3:00 p.m. (patch and repair crew). Koop, Stoffel and Borges work between 6:00 a.m. and 2:00 p.m. By contrast, the concrete crew employees begin work at 2:00 p.m. and work until 9:30 p.m. or 10:00 p.m. or longer, until all the concrete scheduled to be poured is completed. Employer Vice President Davis testified that there have been occasions when the production crew finishes work on the molds around noon. When this occurs, the production crew employees begin pouring the concrete into the molds. Members of the concrete crew complete the day's pour

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following their arrival at 2:00 p.m.<sup>6</sup> Davis further testified, without given any specific examples, that there have been occasions when the concrete crew has finished early and has thereafter been assigned to perform duties normally performed by rebar and production crews. In addition, according to Davis, when another employee is off sick or does not show up for work, another person from a different crew steps into the job. No specific examples were given by Davis concerning this matter. Additionally, according to Davis, employees are frequently moved from one crew to another at the convenience of the Employer. In this regard, Davis provided testimony that one employee, Mark Chapel, was transferred from the concrete crew to the rebar crew.<sup>7</sup> There is no evidence suggesting that there exists any significant disparity, if any, in the hourly wage paid to the members of the various crews, or that there is any differentiation among the crews as to the benefits provided to them by the Employer. It appears that all employees share the same terms and conditions of employment. Further, there is no evidence indicating that the Employer considers employees performing work on a certain crew to be higher skilled than employees working on the other crews. Indeed, the record does not disclose any evidence that the Employer utilizes any sort of formal apprenticeship program or system that would establish a definite line of progression from one level to another, or from one crew to another.

With respect to qualification requirements, there is no evidence that concrete crew employees or employees or any of the other crews are required by the Employer to possess any type of certification or license. As noted, none of the employees hired are required to pass certification tests administered by the Employer. The Employer asserts that it often hires unskilled employees to perform pour and finish work. In this regard, the record establishes that

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<sup>6</sup> Davis testified that on June 13, 2001, for example, the production crew began pouring concrete for two hours starting at noon.

<sup>7</sup> The Union called two witnesses, Eric Bennett and Steve Montoney, at the hearing to refute Davis' assertions concerning employee interaction and interchange. However, Bennett only worked four days prior to going on strike and Montoney worked less than three weeks before striking.

when he was hired Erie Bennett had no significant experience in concrete pouring or finishing work. Indeed, his sole experience in this area was "pouring basements."

The Board has long held that units in the construction industry may be appropriate on the basis of either a craft unit or departmental unit; or so long as the requested employees are clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. Brown & Root Braun, 310 NLRB 632, 635 (1993); The Longcrier Company, 277 NLRB 570 (1985); Brown & Root, Inc., 258 NLRB 1002 (1981).<sup>8</sup>

The record herein fails to establish that the petitioned-for concrete crew employees share a sufficient separate community of interest, in the circumstances presented, to constitute a separate appropriate unit apart from other employees employed at Hazelton. In this regard, the record fails to show that any of the requested employees, other than Steve Montoney, who is a representative of the Laborers District Council, participated in or completed a traditional apprenticeship program or achieved journeyman status in a craft.<sup>9</sup> Although concrete work requires that employees develop certain skills in performing this work, those employees employed by the Employer performing rebar and production work also need to develop certain work skills in order to satisfactorily perform their job duties. But this need to develop certain work skills does not establish that the requested unit is either a craft unit or a functionally distinct group of employees with their own special interests separate from those of the Employer's other

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<sup>8</sup> The Employer asserts that its operation at Hazelton is a manufacturing operation and not a construction site so that an analysis of the appropriateness of the petitioned-for unit as a craft unit in the construction industry would be misplaced. In view of my determination herein that the petitioned-for employees do not constitute a clearly identifiable and homogeneous grouping of employees and do not constitute an appropriate unit even pursuant to a construction industry craft unit analysis, I find it unnecessary to pass on whether the Employer's Hazelton operations are manufacturing or construction operations.

<sup>9</sup> Steve Montoney testified that the concrete work of the Employer, for the most part, required specific concrete skills such as the proper method to be utilized in finishing the concrete and in operating the vibrator. Montoney testified that at the Laborers District Council Training Center individuals receive training in these and other skills in order to become "concrete specialists" or "concrete technicians".

employees.<sup>10</sup> To find the petitioned-for unit to be appropriate in the Employer's mode of operation, I would have to disregard the degree of common supervision by the project manager, project superintendent and production supervisors, as well as the functional integration of the work performed by the petitioned-for employees with that of the remaining employees. Further, the record reflects that the concrete crew employees may perform other tasks and work with other employees, and that employees may be assigned to other crews depending on the needs of the Employer.

Based upon the above, and the record as a whole, I find that the petitioned-for employees do not constitute a unit appropriate for collective bargaining purposes. Brown & Root Braun, supra; The Longview Company, supra; Brown & Root, Inc., supra. In view of the Petitioner's unwillingness to proceed to an election in a more comprehensive unit, I shall dismiss the petition herein.<sup>11</sup>

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<sup>10</sup> In this regard, I find unpersuasive the Petitioner's contention that the concrete crew's functionally distinct interests is demonstrated by the fact that the Laborers District Council does not provide training in rebar work or form work because jurisdiction over such work in West Virginia resides with the Ironworkers Union and the Carpenters Union, respectively. The Petitioner implies that inter-union work jurisdiction considerations should be considered and relied upon by the undersigned in finding that the petitioned-for unit is appropriate for collective-bargaining purposes. It is well settled, however, that the Board makes its unit determinations on the basis of community of interest criteria and not on a union's jurisdictional claim. The Plumbing Contractors Association of Baltimore, Maryland, Inc., 93 NLRB 1081, 1087, fn. 21 (1951).

<sup>11</sup> In view of my determination herein, I find it unnecessary to pass upon the supervisory status of Mike McNair and Chris Klimowicz.

**ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is,  
dismissed.

Dated at Pittsburgh, Pennsylvania, this 18<sup>th</sup> day of July 2001.

/s/ Gerald Kobell

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Gerald Kobell  
Regional Director, Region Six

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